

BOARD OF APPEALS CASE NO. 5209

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BEFORE THE

**APPLICANTS: Betty Bowers, Jean Furches
and Harford County Government**

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ZONING HEARING EXAMINER

**REQUEST: Variance to construct a 6 foot
high fence within the front yard;
10 Singer Road, Abingdon**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 1/23/02 & 1/30/02

HEARING DATE: March 4, 2002

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Record: 1/25/02 & 2/1/02

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Betty Bowers & Jean Furches and, Harford County Government, are requesting a variance, pursuant to Section 267-24B(1) of the Harford County Code, to construct a fence higher than the required 4 foot in the front yard in an R2 District.

The subject parcel is located at 10 Singer Road, Abingdon, Maryland 21009, in the First Election District, and is more particularly identified on Tax Map 56, Grid Number 4E, Parcel 476, Lot 23, in the subdivision of Preston Manor. The parcel contains 0.291 acres more or less.

The Applicant, Jean Furches, appeared and testified that she is the co-owner of the subject property, and that she supports the request for construction of the proposed fence. The property is improved by a single family dwelling, which faces Singer Road, and a gravel drive and parking area.

Mr. Carlos Smith, a project engineer with the Harford County Department of Public Works, testified that the county recently completed a project involving the widening and reconstruction of Singer Road. Mr. Smith stated that he was the project engineer for this improvement project, which involved the widening of Singer Road from 20 feet to 36 feet. This project resulted in the road being moved 10 feet closer to the existing house, and the exterior wall of the dwelling is now located only 35 feet from the Singer Road right-of-way. Singer Road is a busy collector road, with a significant volume of traffic.

Case No. 5209 – Betty Bowers, Jean Furches & Harford County Govt.

According to the witness, the subject property was originally screened by an 8 to 9 foot hedgerow, which ran along the entire front of the lot. The Singer Road project required removal of this hedge by the Harford County Department of Public Works. The Department agreed to replace the hedge with a timber privacy fence upon completion of the project. The proposed fence would be 131 linear feet long, and 6 feet in height.

Mr. Anthony McClune, Manager, Division of Land Use Management for the Department of Planning and Zoning appeared and testified regarding the findings of fact and recommendations made by the Department with regard to the subject request. The Department found that both the property and the circumstances regarding this request are unique. The property fronts on Singer Road, which is a busy collector road. As a result of the recent widening and reconstruction of Singer Road, the existing dwelling is now located only 35 feet from the right-of-way. Construction of the requested fence will provide privacy for the Applicants, and act as a sound buffer against the traffic noise from Singer Road. Mr. McClune testified that the Department recommended approval of the subject request in its February 22, 2002 Staff Report. The witness testified that in his opinion the proposed fence will have no adverse impact on adjacent properties, and that proposed fence will not interfere with traffic on Singer Road, or the intent of the Code.

No witnesses appeared in opposition to the requested variance.

CONCLUSION:

The Applicants, Betty Bowers & Jean Furches and Harford County Government, are requesting a variance, pursuant to Section 267-24B(1) of the Harford County Code, to construct a 6 foot high fence within the front yard setback, in an R2 District.

Section 267-24B(1) of the Harford County Code provides:

“Front yards. For single-family detached units, walls and fences shall not exceed four feet in height above ground elevation. Where fences and walls are an integral part of the unit design and are applied in a consistent and coordinated pattern throughout the project, fences and walls may be constructed to a maximum of six feet above ground elevation. For continuing care retirement communities, consistent and coordinated fencing or walls may be constructed to a maximum of eight feet above ground elevation provided strategically located gates are provided for emergency access.”

Case No. 5209 – Betty Bowers, Jean Furches & Harford County Govt.

Section 267-11 of the Harford County Code permits the granting of variances, stating that:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”

The Maryland Court of Special Appeals set forth a two-prong test for determining whether a variance should be granted in the case of Cromwell v. Ward, 102 Md. App. 691, (1995). This two prong test can be summarized as follows. First, there must be a determination as to whether there is anything unique about the property for which the variance is being requested. A lot is unique if there is a finding that a peculiar characteristic or unusual circumstance relating only to the subject property, causes the zoning ordinance to impact more severely on that property than on surrounding properties. Cromwell, supra, at 721. If the subject property is found to be unique, the hearing examiner may proceed to the second prong of the test. The second prong requires a determination as to whether literal enforcement of the zoning ordinance, with regard to the unique property, would result in practical difficulty or unreasonable hardship to the property owner.

The Hearing Examiner finds that the request in this case is necessitated by an unusual circumstance pertaining only to the subject property, which causes the “zoning ordinance to impact more severely on that property than on surrounding properties.” The widening and reconstruction of Singer Road required the removal of an existing hedgerow, thereby depriving the property owners of both privacy, and a natural sound barrier. This project left the existing dwelling only 35 feet from the Singer Road right-of-way. Singer Road is a busy collector road with significant vehicular traffic. The Harford County Department of Public Works agreed, prior to removal of the existing hedgerow, that it would replace the hedge with a 6-foot vertical board privacy fence. Thus, the first prong of the Cromwell test has been met.

Case No. 5209 – Betty Bowers, Jean Furches & Harford County Govt.

It must next be determined whether denial of the requested variance would create an unreasonable hardship or practical difficulty for the Applicants. The Hearing Examiner finds that literal enforcement of the Code would result in an unreasonable hardship in this case. The construction of a 4 foot fence, as permitted by the Harford County Code, would not provide the Applicants with adequate privacy, or an effective sound barrier. The requested 6 foot fence will provide needed privacy, and cut down on traffic noise emanating from Singer Road.

Finally, the Hearing Examiner finds that the granting of the requested variance will not have any adverse impact on, or be substantially detrimental to, adjacent properties, or materially impair the purpose of this Code or the public interest. As verified by Mr. McClune, the proposed fence will neither not interfere with, nor adversely impact traffic on Singer Road.

The Hearing Examiner recommends approval of the requested variance.

Date: APRIL 17, 2002

Rebecca A. Bryant
Zoning Hearing Examiner